

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,)
in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES)
FOR THE STATE OF OKLAHOMA,)
Plaintiff,)
vs.) 4:05-CV-00329-TCK-SAJ
TYSON FOODS, INC., et al,)
Defendants.)

VOLUME I OF THE VIDEOTAPED
DEPOSITION OF DENNIS COOKE, PhD, produced as a
witness on behalf of the Defendants in the above
styled and numbered cause, taken on the 4th day of
December, 2008, in the City of Tulsa, County of
Tulsa, State of Oklahoma, before me, Lisa A.
Steinmeyer, a Certified Shorthand Reporter, duly
certified under and by virtue of the laws of the
State of Oklahoma.

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1 they certainly went to a different method.

2 Q Who was the person at CDM in charge of the
3 sampling?

4 A Overall it was Roger Olsen.

5 Q Have you met with him in this case? 09:53AM

6 A Many times.

7 Q Have you ever told -- or strike that. Have
8 you ever expressed any concerns or been critical of
9 Dr. Olsen's work in this case?

10 A I don't recall specifically being critical, 09:54AM
11 no.

12 Q Dr. Cooke, have you produced all of the
13 sampling results that you reviewed in this case?

14 A There's 2008 sampling results, which we have a
15 supplemental report, at least a draft of it, in this 09:54AM
16 case, and that has not been produced to the court.

17 Q Would you provide that, please?

18 A It's in my briefcase in Dr. Page -- I mean,
19 Mr. Page's office.

20 Q I need you to get that to Mr. Page. 09:54AM

21 MR. BASSETT: And, Mr. Page, can you get
22 that to us?

23 MR. PAGE: Yeah. I can state for the
24 Record that the data has been produced that we
25 collected this last summer, but I'll get you the 09:54AM

1 draft.

2 Q Dr. Cooke, don't take this the wrong way, but
3 I feel like I need to ask this, have you at any
4 point destroyed any of the sampling results you
5 reviewed?

09:55AM

6 A No.

7 Q Do you have GIS coordinates for the sampling
8 sites used at Tenkiller or at Broken Bow?

9 A No.

10 Q Does anyone?

09:55AM

11 A Not to my knowledge.

12 Q Let's talk about your report for a moment.

13 A Sure.

14 Q Who participated in the preparation of your
15 report besides yourself, of course?

09:55AM

16 A Dr. Welch.

17 Q Anybody else?

18 A I consulted and so did Dr. Welch with Dr. Jack
19 Jones of the University of Missouri.

20 Q Anybody else besides Dr. Jones?

09:56AM

21 A You know, there are four or five paragraphs in
22 Dr. Welch's section that he identifies as being
23 written by -- could be Brian Bennett, and that's the
24 extent to which anyone else has been in on this.

25 Q Who is Brian Bennett?

09:56AM

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4

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13)

14 Plaintiff,)
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17)

18 TYSON FOODS, INC., et al,)
19)

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22

23 VOLUME II OF THE VIDEOTAPED
24 DEPOSITION OF DENNIS COOKE, PhD, produced as a
25 witness on behalf of the Defendants in the above
 styled and numbered cause, taken on the 5th day of
 December, 2008, in the City of Tulsa, County of
 Tulsa, State of Oklahoma, before me, Lisa A.
 Steinmeyer, a Certified Shorthand Reporter, duly
 certified under and by virtue of the laws of the
 State of Oklahoma.

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1 2007 would you attribute to differences in river
2 flows as opposed to changes in total phosphorus
3 loading or biological uptake?

4 A It's certainly varied with the year, and I'm

5 looking at Figure 7. If we look at 1992 and 1993

08:34AM

6 with low water residence time, concentration is

7 higher. Then if you look at 2005, 2006,

8 concentration continues to go up and up in Station

9 04. It's much lower at Station 01. So it's

10 responding to the longer water residence time and,

08:34AM

11 therefore, a higher settling rate, but when we come

12 out here to 2008 where we had a wetter year with

13 more runoff and less settling in the reservoir,

14 concentrations are back up again into the eutrophic

15 range.

08:34AM

16 Q Well, can you explain how you calculated the

17 residence times shown at the top of your Figure 7?

18 A Sure. That's called a half year water

19 residence time, and so we use the summer season to

20 calculate this, the six months of what we call the

08:35AM

21 summer season, so that's the half year, and divide

22 the reservoir volume by that half year inflow.

23 Q Where is figure 2008 -- excuse me. Where is

24 the year 2008 number shown on your Figure 7?

25 A Well, what I'm using is a supplemental report

08:35AM

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1 that we gave you yesterday, which shows the 2008
2 year.

3 Q That supplemental report that you -- that
4 you're looking at right now --

5 A Yes, sir. 08:35AM

6 Q -- that's something that you presented or
7 handed to us yesterday; is that correct?

8 A Yes.

9 Q I think you said it was dated November 25th?

10 A I believe so. 08:35AM

11 Q Of 2008?

12 A Let's say late November and that would be
13 accurate.

14 Q And when was your report submitted in this
15 case? 08:36AM

16 A This was submitted at the end of May of 2008.

17 Q And what you're looking at right now on Figure
18 7, which is a part of the packet of new stuff you
19 presented us yesterday, that has all been prepared
20 since the submission of your original report in this 08:36AM
21 case; correct?

22 A Well, yeah. These are new data obtained since
23 that was submitted.

24 Q And the packet of stuff that you presented to
25 us yesterday that has new data and new materials in 08:36AM

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1 it, those aren't corrections of the original work
2 you did in this case, are they?

3 A No.

4 Q It's new data, isn't it?

5 A It's new data for 2008. 08:36AM

6 Q It's new information, isn't it?

7 A Yes.

8 Q And are you presenting or did you present that
9 to us yesterday at the start of your deposition?

10 A Yes. 08:36AM

11 Q Okay. Some five months after your original
12 report was submitted for the purpose of trying to
13 bolster your opinions in this case?

14 A Well, all I'm interested in is accuracy here,
15 and that's what we get by getting more data, and 08:37AM
16 this certainly conforms -- these data certainly
17 conform to our understanding of how reservoirs work.

18 Q Thank you. Let's look at your second opinion,
19 which is on Page 1 of your report in which, Dr.

20 Cooke, you say that Lake Tenkiller switched from 08:37AM

21 borderline oligotrophic-mesotrophic in 1974-1975 to
22 eutrophic by 1976 and remained so through 2007,
23 except in 2006 when drought conditions reduced the
24 impact of TP-rich river inflow. That's what you
25 stated in that opinion, was it not? 08:38AM

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1 A I believe that's how it reads.

2 Q Okay. Now, looking at your total phosphorus
3 measurements back on Figure 7, Page 69 of your
4 report --

5 A Uh-huh, I have it.

08:38AM

6 Q You've got that in front of you now, Dr.
7 Cooke?

8 A Yes.

9 Q Don't your lake average values indicate that
10 the lake was eutrophic in 1974, 1992 and 1993?

08:38AM

11 A Based on total phosphorus, that would be
12 correct.

13 Q And don't your lake average values also
14 indicate the lake switched to mesotrophic in 2005,
15 2006 and 2007?

08:39AM

16 A Based on total phosphorus, that would be
17 correct and, of course, that happened because of
18 residence time was so much longer in those years so
19 there was a lot of settling by the time the water
20 reached the Station LK-01 and 02, and that's the
21 reason for that.

08:39AM

22 Q But regardless, the lake average values did
23 switch to mesotrophic in '05, '06 and '07, did they
24 not?

25 A Right, for the cause that I had just given

08:39AM

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